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January 26, 2022

ATTORNEY CLIENT COMMUNICATION

Hon. Laura Taylor Swain, Chief Judge
U.S. District Court - Southern District of New York
500 Pearl St.
New York, NY 10007

MEMO ENDORSED

Re: *Martinez v. U.S.* 21-Cv-10445 (LTS) (Habeas Petition)
Related criminal case: *U.S. v. Martinez* 18-Cr-319 (LTS)

Dear Judge Swain:

I am counsel for Noel Martinez, the Petitioner in the above referenced matter.

Please accept this letter as a status report and in lieu of a formal motion for adjournment of the current briefing schedule.

Prior to my appearance in this case, Mr. Martinez commenced this proceeding by filing a *pro se* Petition seeking issuance of a writ of habeas corpus pursuant to 28 U.S.C. §2255 (the “Petition”). The Petition asserts two Claims for habeas relief.¹ Both Claims arise out of the same circumstance wherein Mr. Martinez contends his Presentence Investigation Report (the “PSR”) incorrectly calculated that he was a Career Offender pursuant to the U.S. Sentencing Guidelines. Mr. Martinez further contends that, due to the failure of his counsel to object to this calculation, at sentencing, he was prejudiced by this error. It is my determination that, as a Career Offender, Mr. Martinez’s advisory Sentencing Guidelines were significantly higher than what they would have been had he not been designated a Career Offender. Based upon my review of the record, and conversations with Mr. Martinez, in my opinion, it appears the PSR’s Career Offender designation was in error. Accordingly, I currently intend to amend the Petition by filing a supporting Memorandum of Law

I have discussed my findings with the Government. It is my understanding they are discussing this matter internally and with the Probation Department. In my further understanding that, upon confirmation of the error in the PSR, the Government may consider consenting to habeas relief (to wit: vacatur of Mr. Martinez’s sentence and then having him resentenced based upon a

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The Petition also asserts a Third Claim seeking appointment of counsel which was granted.

corrected PSR). In the event this occurs, the need for the parties to submit briefings, in regard to the amendment of the Petition, will be obviated.

Pursuant to the schedule set forth in Court's Order dated December 8, 2021, by my calculation, my amendment to the Petition is due by February 7, 2022. However, based upon the foregoing, I respectfully request this submission deadline, and the parties corresponding response and reply dates, be adjourned by thirty days.

I have conferred with the Government and they consent to this application.

Respectfully submitted,
/s/
Jeffrey G. Pittell

cc: Jamie Bagliebter, AUSA
Noel Martinez

The requested extension of time is granted. Counsel shall file Petitioner's amendment to the petition by March 9, 2022, and the response and reply deadlines are extended accordingly. DE#8 in case no. 21-cv-10445 and DE#457 in case no. 18-cr-319 are resolved.

SO ORDERED.

Dated: January 27, 2022

/s/ Laura Taylor Swain, Chief U.S.D.J.